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ABSTRACT

Due process procedures that are judicially required in public colleges and universities when tenured faculty are involuntarily terminated for cause were identified through analysis of federal case law. Other areas of case law pertaining to due process were reviewed, including student dismissals from public colleges and universities, and property deprivation in areas outside higher education. Cases were selected from those dealing with procedural due process decided by the U. S. Supreme Court between 1970 and 1979, as well as 1982 cases from 11 federal judicial circuits. Of 10 due process components, 2 primary ones were identified: (1) an oral or written statement of the charges; and (2) an opportunity to be heard in one's own defense before competent and impartial persons who have the power to expel, suspend, or dismiss. For U.S. Supreme Court cases, the first due process component was referred to in about 70% of decided cases, while the second component was referred to in all of the decided cases. For the federal circuit cases, the first component appeared in more than 65% of the cases, while the second component appeared in more than 70%. A list of cases including dates of the decisions is appended. (SW)

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PROCEDURAL DUE PROCESS IN THE CONTEXT OF PUBLIC HIGHER EDUCATION: THE IDENTIFICATION OF SPECIFIC DUE PROCESS COMPONENTS IMPACTING THE TERMINATION OF TENURED FACULTY

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I. Introduction

The focus of this paper is to identify through analysis of federal case law due process procedures which are judicially required in public colleges and universities when faculty are involuntarily terminated for cause.[1] In particular, cases reviewed are those which have involved dismissal of tenured faculty members. Since tenure is considered by the courts to be a property right, termination of tenured faculty is judicially considered to be a deprivation of property.[2] Accordingly, due process requirements are mandated. In addition, other relevant areas of case law pertaining to due process have been reviewed. These areas include student dismissals from public colleges and universities as well as other types of property deprivation in areas outside of higher education.

Selected cases referenced in this paper come from either of two sources. First, cases dealing with procedural due process decided by the United States Supreme Court between 1970 and 1979 have been reviewed. These cases are set forth in Table 1. Only those cases which appeared to be most pertinent to higher education procedural due process concerns are included. The second source of cases for this chapter is the eleven (pre July, 1982) federal judicial circuits. All relevant due process cases decided by either Federal District Courts or Federal Circuit Courts of Appeals between 1975 and 1979 were reviewed. These cases are set forth in Table 2. Again, only those cases which appeared to be most pertinent to higher education procedural due process concerns have been included. If few or no cases from a given judicial circuit have been reported or decided, obviously few or more have been included. This is the case with the DC Circuit.

All of the judicial findings of fact and conclusions of law in discussed cases have not been included in the following material. Rather, only those

salient facts and conclusions of law necessary to understand the procedural due process aspects of each case have been set forth. Furthermore, after each case has been discussed, the specific procedural due process components identified in that case are set forth in the text.

Finally, this paper sets forth a working definition of due process. The summary includes analysis of the cases not only by comparisons between judicial circuits but also by determining the relative import and usage of each of the component parts of procedural due process.

II. Due Process Defined

Due process has been defined as follows:

> Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material right in the matter involved.[3]

In Cafeteria Workers v. McElroy[4] the Supreme Court observed that "due process, unlike some legal rules, is not a technical conception with a fixed content, unrelated to time, place, and circumstances."[5] In Morrissey v. Brewer,[6] the same court noted that "due process is flexible and calls for such procedural protections as the particular situation demands."[7] Yet again, in Matthews v. Eldridge[8] the Supreme Court indicated that the specific requirements or components of due process depend on the consideration of three distinct factors:

> (F)irst, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.[9]

Due process, then, can properly be conceived of as a flexible concept, one that varies depending on the analysis of the three factors identified in Matthews and

further, the degree to which each exists.

While judicial decisions and the authors of related literature[10] refer to due process as a flexible concept, after review of selected cases it appears that the components of due process, particularly as it relates to higher education, can be determined. Specifically, ten due process components, judicially mandated or cited with approval, have been identified in the various stages of litigation involving public institutions of higher education. These ten procedural due process components are as follows: (NOTICE) 1. an oral or written statement of the charges which must be specific as well as inclusive as to the particulars of the forthcoming hearing; 2. being informed of the charges and the hearing substantially in advance of the hearing so that the aggrieved party has a sufficient opportunity to rebut the charges, e.g., examine affidavits or exhibits to be used by the institution; 3. provision of a written statement which discloses the college or university evidence supporting termination or causes(s) of termination; 4. provision of the names and the nature of the testimony of witnesses against him/her; (HEARING) 5. an opportunity to be heard in one's own defense before competent and impartial persons who have the power to expel, suspend, or dismiss (includes the right to present witnesses and documentary evidence); 6. an opportunity to bring counsel to the hearing; 7. an opportunity to question adverse witnesses; 8. a written statement by the fact finders as to the evidence relied upon; (APPEAL) 9. an opportunity to keep or have kept an adequate record of the hearing proceedings; and 10. provision of a record of the proceeding which must be presented and open to the inspection of the aggrieved party. No judicial decision was found which required all ten components to be used in an administrative proceeding. On the other hand, each of the ten identified components mentioned has been acknowledged in at least one or more judicial decisions and in at least one or more federal judicial circuits.

As cases decided by the Supreme Court and the various other federal courts are discussed and presented, specifics regarding the selected cases, including the particular due process component(s), have been set forth in Tables 2 through 4.

III. Selected United States Supreme Court Due Process Cases (1970 - 1979)

One of the first cases in this period dealing with the concept of due process is that of Goldberg v. Kelly.[11] In Goldberg, residents of New York City were receiving financial aid under either a federal program (Aid to Families with Dependent Children) or a state program (Home Relief Program). These residents instituted legal action in a federal district court (S.D.N.Y.) arguing that state and city officials had terminated or were about to terminate their benefits without prior notice and hearing. They argued that such action deprived them of property without due process of law. At the time the suit was filed, there was no statutory requirement which required notice and hearing prior to termination. Shortly thereafter, however, procedures requiring notice and hearing were adopted. These new procedures were challenged as being constitutionally deficient.

The challenged procedures included the following features: seven day notice of termination of benefits; right to have the decision reviewed by a higher official; right to a posttermination hearing (if benefits were terminated) wherein one could personally appear, offer oral evidence, confront and cross-examine witnesses, and make a record of the proceeding.

Notwithstanding these procedures, the Supreme Court affirmed the District Court ruling that only a pretermination hearing prior to the termination of benefits would meet Fourteenth Amendment due process requirements. The Supreme Court observed:

> The fundamental requisite of due process of law is the opportunity to be heard. The hearing must be at a meaningful time and in a meaningful manner. In the present context, these principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally.[12]

A similar result was reached in Wheeler v. Montgomery,[13] a welfare case presenting facts similar to Goldberg.

In terms of the due process components required by the Court, the following were noted: oral or written notice; timely notice; and an opportunity to question adverse witnesses. While the Goldberg and Wheeler cases deal with welfare concerns rather than higher education concerns, both are helpful for understanding specifics of due process.

Two relevant higher education cases are Board of Regents v. Roth[14] and Perry v. Sindermann.[15] In Roth, professor Roth was hired for a fixed term (one academic year) to teach at Wisconsin State University-Oshkosh. His contract was not renewed for a subsequent year and reasons were not provided for his nonreemployment. University regulations, based on state law, provided for no hearing if an employee was not tenured. Roth was not tenured nor did he claim to be tenured. The University did have specific guidelines for determining when one would qualify for tenure.

Roth filed suit against the University claiming that the true reason for his termination was his speech which was critical of the University. He argued that the fact that he was dismissed after one year without a hearing and that he was not provided reasons for his nonrenewal, were both violations of his due process rights. Both the District Court and the United States Court of Appeals for the Seventh Circuit agreed with Roth's due process claim. The United States Supreme Court reversed.

The Supreme Court concluded that a due process hearing could be demanded

only if Roth could have shown that his nonrenewal deprived him of a liberty interest or that he had a property interest in continued employment. Absent such showings, no hearing was necessary. The Court did not specifically set forth components of procedural due process in Roth except it did observe that: "When protected interests are implicated, the right to some kind of prior hearing is paramount."[16]

In his dissent, Justice Douglas argued that due process for Roth should have included, at a minimum, a statement of reasons why the University intended not to retain, notice of a hearing where Roth could have responded to the reasons for termination, and a hearing wherein Roth could have submitted evidence to support his position.

The Sindermann case raises issues similar to those in Roth. Professor Sindermann had taught in community colleges in Texas for ten years even though he was not employed by the same institution during those ten years. For the last four of those ten years, he was employed at Odessa Junior College under a series of one-year contracts. During his employment at Odessa Junior College, he served briefly as president of the Texas Junior College Teachers Association. Several times, he absented himself from his teaching responsibilities to testify before committees of the Texas legislature. He also became an advocate of Odessa Junior College pursuing four-year status rather than remaining a junior college. His position on this issue was at variance with the college's governing board.

When Sindermann's fourth one-year contract had expired, the Regents voted not to renew it. The Regents also issued a press release setting forth allegations re Sindermann's insubordination. Sindermann was not provided official reasons for his contract non-renewal nor was he offered a hearing to permit him to challenge his non-renewal. He filed suit arguing that he was not rehired

because of his statements (speech) and that this violated his right to freedom to speech. He also argued that he was entitled to a pretermination hearing and that the denial of such a hearing to him violated his Fourteenth Amendment due process rights.

The District Court found for the Regents but the United States Court of Appeals for the Fifth Circuit reversed, holding that despite the lack of a formal tenure system, if Sindermann could show that he had an expectancy of employment, he would be entitled to a due process hearing prior to his termination. The United States Supreme Court affirmed the Fifth Circuit. The Court observed that while proof of an expectancy of continued employment would not entitle Sindermann to reinstatement, such a showing would obligate college officials to grant a hearing if requested.

In both Roth and Sindermann, the United States Supreme Court did not deal with particular due process components. On the other hand, in both decisions, the Supreme Court agreed that protected faculty interests do require hearings prior to termination.

The case of Arnett v. Kennedy[17] involved the termination of a public employee from public employment. Kennedy was a nonprobationary employee of the Office of Economic Opportunity who was dismissed from his civil service position for having made "recklessly false and defamatory" statements about other OEO employees. Procedural standards for termination for cause were specified in the governing statute, the Lloyd-LaFollette Act. Kennedy failed to respond to the given administrative appeal options and filed suit claiming that the Lloyd-LaFollette Act, and in particular, its procedure for termination of nonprobationary employees, was deficient.

The Act granted the following procedural due process rights:

(1) notice of the action sought and of any charges preferred against him;

(2) a copy of the charges;

(3) a reasonable time for filing a written answer to the charges, with affidavits; and

(4) a written decision on the answer at the earliest practicable date.[18]

Further, under the Act, appropriate records were to be maintained for and provided to the one being terminated. The Act also provided for a posttermination evidentiary hearing. Kennedy argued that procedural due process entitled him to a pretermination evidentiary hearing.

In the District Court proceedings, a three-judge court held that the Act denied Kennedy due process since it failed to require a pretermination trial-type hearing. The Supreme Court reversed, stating that the termination proceedings contemplated by the Act, including the posttermination evidentiary hearing, was constitutionally adequate and further that such did not violate procedural due process.

The case of Goss v. Lopez[19] involved an Ohio statute which permitted Ohio public school principals to suspend students for misconduct for up to ten days or expel them. If expelled the student(s) could appeal the decision of the Board of Education and also ask for a hearing. Suspended students were not provided similar hearings.

Nine students were suspended from a Columbus High School under the provisions of this Ohio statute. These students filed a complaint against the Columbus Board of Education. The complaint sought, inter alia, declaration that the statute in question was unconstitutional in that it deprived the students of their right to an education without a hearing in violation of Fourteenth Amendment due process protections. A three-judge District Court found for the students and the Board of Education appealed to the Supreme Court.

In affirming the three-judge District Court, the Supreme Court did spell

out, procedurally, component parts of due process in this given context:

> Due Process . . . requires . . . that the student be given oral or written notice of the charges against him and if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story.[20]

In addition the Court observed that generally, notice and hearing should precede the student's removal from school but if threat of disruption or similar threats were probable, hearing and notice could be given as soon as practicable after the removal of the student from the school.

Matthews v. Eldridge[21] raises the issue as to whether or not one who is a recipient of disability benefits under the Social Security Act must be given a pretermination hearing prior to the cessation of disability benefits. Basing its reasoning substantially on the earlier Supreme Court case of Goldberg v. Kelly, the District Court enjoined termination of Eldridge's benefits prior to an evidentiary hearing. The United States Court of Appeals for the Fourth Circuit affirmed.

In reversing the Court of Appeals, the Supreme Court spent considerable time discussing procedural due process and what it did and did not require:

> In only one case, Goldberg v. Kelly, has the Court held that a hearing closely approximating a judicial trial is necessary. In other cases requiring some type of pretermination hearing as a matter of constitutional right the Court has spoken sparingly about the requisite procedures.[22]

> These decisions underscore the truism that due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. Due process is flexible and calls for such procedural protections as the particular situation demands.[23]

> The judicial model of an evidentiary hearing is neither a required, nor even the most effective, method of decision making in all circumstances. The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.[24]

The final Supreme Court decision we will review is Horowitz v. Board of

Curators of University of Missouri.[25] Horowitz was a medical student at the University of Missouri-Kansas City. She had been admitted to the medical school with advanced standing as she had completed previous medical studies at both Duke University and Women's Medical College of Pennsylvania. The curriculum at the University of Missouri required competency in both classroom and clinical skills. Horowitz's intended career goal was to be a psychiatrist, teacher, or researcher. All of her entering test scores were in the ninety-ninth percentile.

From the beginning of her medical studies at Missouri she had difficulty meeting the requirements of the expected clinical performances even though her classroom performance tended to be outstanding. She was eventually advanced to the last year of medical school but on a probationary basis.

Her clinical deficiencies continued through her senior year, which ultimately led to the recommendation that she not be permitted to graduate. She was permitted to appeal that decision. Her appeal consisted of assisting seven local independent practicing physicians who were subsequently asked to evaluate her performance while working with them. Only two of the seven recommended graduation on schedule while two recommended immediate termination. Ultimately she was dropped from the medical school.

Horowitz sued the University arguing among other things that the University had not accorded her procedural due process prior to her dismissal. The District Court concluded that all procedural due process requirements had been met and dismissed the complaint. The United States Court of Appeals for the Eighth Circuit reversed.

Reversing the Court of Appeals, the Supreme Court observed that:

> We need not decide, however, whether respondent's dismissal deprived her of a liberty interest in pursuing a medical career. Nor need we decide whether respondent's dismissal infringed any

> other interest constitutionally protected against deprivation without procedural due process. Assuming the existence of a liberty or property interest, respondent has been awarded at least as much due process as the Fourteenth Amendment requires.[26]

The Court then went on to observe that in Goss v. Lopez it had previously held that a student dismissed for disciplinary reasons must be given "oral or written notice of the charges against him and if he denies them an explanation of the evidence the authorities have and an opportunity to present his side of the story."[27] While affirming its prior holding in Lopez, the Court proceeded to distinguish between a dismissal for academic as compared with disciplinary reasons,[28] requiring more formal procedures in the latter instance while permitting only informal procedures in the former instance.

These United States Supreme Court cases have been summarized in tabular form in Tables 1 and 3.

IV. Selected United States Judicial Circuit Due Process Cases (1975 - 1979)

Cases discussed include both United States Federal District Court and United States Circuit Court of Appeals decisions. For purposes of this section all cases decided by District Courts within a given judicial circuit are referred to as decisions of that circuit. Further, all of these cases have been summarized in tabular form in Tables 2 and 4.

First Circuit

In Willens v. University of Massachusetts,[29] the only relevant higher education due process case found in this circuit, the Court of Appeals affirmed a District Court summary judgment in favor of the University of Massachusetts. Professor Willens was hired by the University in 1967. In her employment letter she was told that her tenure year would be 1970-1971. This tenure year, with the concurrence of Willens, was subsequently changed to 1972-1973. Her contract

was not renewed thereafter and Willens filed suit. She claimed that she had "de facto tenure" by virtue of the fact of her original letter stating that her tenure year would be 1970-1971. The University had no de facto tenure system and in fact had a formal, explicit, tenure system.

The District Court ruled that Willens was not entitled to a hearing inasmuch as she had no property interest in continued employment and further, that her liberty interests were not violated.

Second Circuit

Ekelund v. Secretary of Commerce[30] involved the dismissal of a midshipman from the United States Merchant Marine Academy for possession of dangerous drugs in his room. At his administrative hearing hearsay evidence was admitted but the right to cross-examine certain witnesses was denied inasmuch as the District Court could not compel their appearance. Nevertheless, at Ekelund's hearing, he was represented by outside counsel, was allowed witnesses on his behalf, was permitted to cross-examine available witnesses, and was permitted to appeal his decision. The District Court observed that the administrative hearing complied with due process standards.

In Klein v. Board of Higher Education of the City of New York,[31] various tenured, certificated, and reappointed employees were dismissed as part of a system-wide retrenchment program. Because the University denied a pretermination hearing and provided only for a posttermination hearing, the plaintiffs argued that their due process rights were violated.

The District Court observed that since all of the plaintiffs had claims of entitlement to employment for 1976-1977 academic year, they were entitled to due process. However, the court concluded that the plaintiffs were not entitled to a pretermination hearing. After reviewing the variety of rights and protections which were provided by the University to the plaintiffs, the court concluded:

> The procedural rights and protections afforded to plaintiffs, outlined earlier in this opinion, were more than ample to satisfy the requirement that they be given notice and opportunity for a hearing appropriate to the nature of the case in light of the competing interests involved.[32]

Third Circuit

An example of the kind of extensive litigation which can develop over the issue of faculty dismissal is found in Skehan v. Board of Trustees of Bloomsburg State College.[33] The litigation began in 1973 and has had an extended history.

Professor Skehan was appointed as a nontenured professor at Bloomsburg State College in January, 1969. He was previously employed at Seton Hall University (1965-1968) but his contract there was not renewed. His initial contract at Bloomsburg State was a six-month trial contract. This contract was renewed for 1969-1970 and 1970-1971. At no time did Skehan have tenure at Bloomsburg.

Skehan was active in various non-academic campus issues. At times he failed to meet with his classes. At still other times, he scheduled his own classes in defiance of administrative procedures and regulations. These latter events took place during the Fall term of the 1970-1971 academic year. Skehan had been told that the 1970-1971 contract would be his last.

Because Skehan directly defied the directives of the college president, Skehan was advised that he was being relieved of his responsibilities on October 9, 1970. On October 17 he was removed from the payroll. On December 1, Skehan was offered a posttermination hearing but he refused to participate.

In his suit against Bloomsburg Skehan maintained that under College regulations he was entitled to a hearing with regard to reasons for nonrenewal if an allegation of a violation of academic freedom was raised. Subsequent to his request for a nonrenewal hearing, he was terminated for breach of contractual responsibilities. In addition, he argued that termination of a contract mid-

year entitled him to a termination hearing. He also argued that his dismissal was in response to his exercise of his First Amendment rights.

With regard to his due process claim, the Court of Appeals[34] found that Skehan was entitled to a nonrenewal hearing contractually and that it was a violation of his due process rights for the college to terminate Skehan's employ without first providing him with a nonrenewal hearing. The District Court in an earlier ruling, had previously agreed with Skehan's contention that he was entitled to a termination hearing: "Absent special circumstances, due process requires that one who is deprived of a protected interest be given a hearing prior to the deprivation."[35]

Another faculty dismissal case is Chung v. Park.[36] In Park, a tenured biology professor at Mansfield State College was terminated from employment. He was provided with a hearing after his dismissal and such hearing provided him a wide panoply of procedural protections including the following: a. hearing was public; b. admissibility of evidence would depend on relevance and materiality; c. written transcript was kept for each party; d. both parties could present written evidence or oral testimony and both could cross-examine; e. both parties were represented by counsel; f. the hearing panel would submit a written statement of findings of facts and conclusions; g. Chung could appeal the decision based on Pennsylvania Administrative Agency Law. After reviewing the hearing procedures used, the District Court observed: "There can be no question but that Dr. Chung received a hearing which comported with the bare minima of 'due process'."[37]

On appeal the Court of Appeals concluded that a hearing involving termination did not have to take place prior to actual termination if in fact the hearing was provided prior to the termination of benefits. The court further set forth procedural safeguards which could be used where one could be deprived

of a property interest:

> 1) written notice of the grounds for termination;
> 2) disclosure of the evidence supporting termination;
> 3) the right to confront and cross-examine adverse witnesses;
> 4) an opportunity to be heard in person and to present witnesses and documentary evidence;
> 5) a neutral and detached hearing body;
> 6) a written statement by the fact finders as to the evidence relied upon.[38]

The cases of Roseman v. Indiana University of Pennsylvania, at Indiana[39] and Keddie v. Pennsylvania State University[40] both involved dismissal of non-tenured professors. In Roseman the plaintiff's contract was not renewed after two years of service. In Keddie the plaintiff was denied tenure and released. Both plaintiffs raised First Amendment concerns and both argued that they were entitled to pretermination hearings. In both cases, however, the respective courts found no property interests deserving of protection.

Diluigi v. Kafkalas[41] involved a National Guard technician who was terminated from employment with the Guard at the end of a one-year probationary period. Diluigi claimed that his termination was a Fifth Amendment due process violation in that he was not given adequate notice and hearing. Concluding that Diluigi had not been given adequate and timely notice of termination, the District Court observed:

> At a minimum, due process requires that deprivation of property be preceded by notice and an opportunity for a hearing appropriate to the situation.
>
> Notice to be adequate must be given sufficiently before any hearing to permit the party being considered for termination an adequate opportunity to prepare a response.[42]

The Court of Appeals, however, vacated the judgment because Diluigi had no property rights in the position from which he was terminated.[43]

The final Third Circuit case to be reviewed is Ross v. Pennsylvania State University.[44] Ross was a graduate student at the University and also held a

graduate assistantship. He was also a master's degree candidate in ceramic science. During the course of his study he was informed that he was going to be dropped from the University for poor scholarship. At Penn State, termination as a student also meant termination of the graduate assistantship. Ross argued that his termination as a student without a hearing violated his Fourteenth Amendment right to procedural due process.

The District Court concluded that Ross had a property interest (created by State law) in the continuation of his studies as a graduate student but not as a graduate assistant. Penn State required students to present a 3.0 G.P.A. for graduation but had no regulations regarding dismissal if a student dropped below the cumulative 3.0 G.P.A. requirements. In determining the process which was due Ross, the court observed:

> Due process usually requires at a minimum that a deprivation of property be preceded by a notice and an opportunity for a hearing appropriate to the nature of the case.[45]

The court then proceeded to identify the nature of the hearing to which Ross was entitled:

> Full adversary proceeding would not be required. Ross would only have to be given an opportunity to explain the reasons for his poor scholarship and to provide any information which might lead the administration to conclude that Ross' performance in the future would be satisfactory.[46]

Fourth Circuit

In Phillips v. Puryear,[47] Phillips had been employed by Central Virginia Community College as an associate professor of health, physical education, and recreation. He had been employed at the college from September, 1969 until February, 1975.

During the 1974-75 academic year, Phillips applied for a multi-year contract which was ultimately denied him. After he had received the report of this contract denial he was reported to have made threats against several of his

colleagues. After some attempt to secure facts regarding these alleged threats, defendant president Puryear summarily suspended Phillips from his position. Thereafter, hearing procedures were set up pursuant to institutional regulations. All of the appeal/hearing decisions were adverse to Phillips.

The court noted that since the suspension of Phillips was a mid-contract suspension, and further, since the action of the college involving Phillips' reputation was published, Phillips had experienced both liberty and property deprivations and was entitled to Fourteenth Amendment due process. The District Court, however, found that the posttermination procedures provided to Phillips were not Constitutionally defective. At his posttermination hearing, Phillips' counsel was present, witnesses were called, and cross-examination was conducted.

In the cases of Kilcoyne v. Morgan[48] and Tyler v. College of William and Mary[49] professors who claimed to be tenured were dismissed. In Kilcoyne an associate professor at East Carolina University alleged that he was tenured and therefore his dismissal did not comport with dismissal procedures provided tenured faculty members. The District Court found that plaintiff Kilcoyne was not tenured, that he had no property right to continued employment, and hence was not entitled to due process. The Tyler court reached a decision substantially similar to that in Kilcoyne. The Tyler court observed, however, that possession of a property interest would entitle the holder thereof to both notice and hearing prior to deprivation of such.

In Shaw v. Board of Trustees of Frederick Community College[50] two tenured faculty members who were also academic division heads failed to participate in several professional events and activities required by the college. Their non-participation was designed to protest a change in the College's tenure policy. They were provided numerous opportunities to apologize for their wrongdoing and were told that dismissal would result if apologies were not forthcoming. Two

days after the previously communicated deadline for the apologies the professors provided their apologies. Nevertheless, the Board chose to dismiss both after each had been provided hearings before a Board hearing panel and ultimately before the full Board.

With regard to the procedural components of due process, the court noted the following:

> Procedural due process required that they have an opportunity for a hearing prior to a final decision upon the termination of their employment.
>
> No procedural due process right exists . . . to a public hearing by the Board.
>
> Neither does due process require testimony under oath in the circumstances here.[51]

Finally, in Kowtoniuk v. Quarles,[52] a nontenured faculty member was dismissed from Virginia State College. Kowtoniuk was offered a termination hearing but after its conclusion claimed that his hearing was constitutionally inadequate.

After evaluating the procedures accorded Kowtoniuk in this case, the Court concluded:

> To sum up our conclusions on the claim of a denial of procedural due process: the plaintiff was given adequate notice of the charges on which the right to dismiss was based and timely notice of the hearing on those charges; he was accorded the right to counsel, the right to confront and to cross-examine the witnesses against him; and there was no showing of legal bias in the appointment of the hearing committee or of any attempt at coercion of the committee. Under these circumstances, there is no basis for any claim of a violation of procedural due process in the hearing.[53]

Fifth Circuit

Even though not within the particular time parameters of 1975-1979, Dixon v. Alabama State Board of Education[54] set out rather early the due process expectations for the Fifth Circuit. In reversing the District Court's decision

upholding numerous expulsions from Alabama State College, the Court of Appeals held that due process required notice and some opportunity for a hearing before students at a tax-supported college could be expelled for misconduct. Specifically:

> (T)he rudiments of an adversary proceeding may be preserved without encroaching upon the interests of the college. In the instant case, the student should be given the names of the witnesses against him and an oral report or written report on the facts to which each witness testifies. He should also be given the opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the student's inspection. If these rudimentary elements of fair play are followed in a case of misconduct of this particular type, we feel that the requirements of due process of law will have been fulfilled.[55]

Another Fifth Circuit case involved a nontenured faculty member at the University of Texas Health Science Center at Houston. He was employed under a two-year contract which was to end in August, 1975. The contract was subject to the procedures of the University. His contract was terminated and he contested the validity of the termination in Assaf v. University of Texas System.[56] Beginning with the affirmation that nontenured faculty members have no inherent right to a hearing based solely on the fact of termination, the District Court nevertheless agreed that if there was a deprivation of some sort, a hearing could be called for.

Notice of termination was to have been given to Assaf by December 15, 1974. In fact, notice was not given until March 25, 1975. Because the notice of nonreappointment was late, this procedural violation gave rise to an expectancy of a contract for another year. This expectancy could be considered to be a property right capable of protection. The court ordered an expeditious hearing under the terms of Ferguson v. Thomas.[57]

In Ferguson, the court of appeals held that minimum due process in faculty termination cases requires the following:

> (a) he be advised of the cause or causes for his termination in sufficient detail to enable him to show any error that may exist,
> (b) he be advised of the names and the nature of the testimony of witnesses against him;
> (c) at a reasonable time after such advice he must be accorded a meaningful opportunity to be heard in his own defense;
> (d) that hearing should be before a tribunal that both possesses academic expertise and has an apparent impartiality toward the charges.[58]

These Ferguson requirements are reflected in a majority of Fifth Circuit due process decisions.

The importance of having an impartial decision-maker in a termination case is illustrated by Jenkins v. Louisiana State Board of Education.[59] In Jenkins six students were suspended from Grambling University for violation of various University regulations. The District Court refused to grant the relief requested by the students and the students appealed. Generally denying the relief requested by the students, the Court of Appeals observed that "the standards of procedural due process are not absolutes."[60] But with regard to having an impartial decision-maker, the court concluded: "There is no question but that a student charged with misconduct has a right to an impartial tribunal."[61]

In Kaprelian v. Texas Woman's University,[62] plaintiff Kaprelian was a non-tenured professor who taught modern dance at the University. Eventually she and the dean of her college began to disagree about the structure and substance of the University's dance program. Ultimately, her resignation was called for but she refused to resign and instead sought legal counsel. When her contract was not renewed because of her "unprofessional conduct" and her alleged disloyalty to Texas Women's University, Kaprelian filed suit. The District Court agreed with Kaprelian's argument that she was entitled to due process safeguards and proceeded to order its own ad hoc hearing committee to provide a hearing for

Kaprelian. The basis of the District Court's action was that Kaprelian's liberty interest had been violated.

The Court of Appeals reversed and remanded, arguing that regular institutional administrative hearing commit-tees, not judicially determined committees, should be used for this type of hearing. The Court of Appeals agreed that a property interest was not at issue. On the other hand, the court was not sufficiently convinced that Kaprelian's First Amendment and/or liberty interest had been properly developed by the District Court: "Until proper findings are made it will not be known whether due process at the administrative level was required.[63]

In Megill v. Board of Regents of the State of Florida,[64] professor Megill was hired in 1966 by the University of Florida as an assistant professor of philosophy. In 1972 he was told that he would not be given tenure and that his contract would not be renewed beyond June, 1973. He asked for a hearing which was granted. During his hearing, which lasted five days, various exhibits, briefs, and other documents were presented. Counsel were involved and cross-examination of witnesses was permitted. The transcript of the hearing contained over seventeen hundred pages. The District Court, in responding to the complaint that Megill's Fourteenth Amendment due process rights were not sufficiently protected, concluded that the notice and hearings accorded Megill were clearly sufficient.

The Court of Appeals affirmed the District Court decision, emphasizing the fact that decisionmakers involved in the hearing process must be impartial and are bound to render their "independent" judgments:

> (A)n impartial decisionmaker is a basic constituent of minimum due process.[65]
>
> Due process requires that administrative board members exercise their independent judgment in arriving at a decision.[66]

The cases of Wood v. University of Southern Mississippi,[67] Chambliss v. J.R. Foote[68] and Citron v. Jackson State University[69] all involved dismissal of nontenured faculty. In each case, the same legal conclusion was reached: that since the professors had no constitutionally protected property interest no pretermination or posttermination hearings were necessary. These decisions were affirmed by the Court of Appeals.

The case of Stewart v. Bailey[70] presents an interesting factual situation which is somewhat different than other reported termination cases. Professor Stewart was a nontenured teacher who was employed at George C. Wallace Technical Community College from October, 1970 to March, 1974. In March, Stewart was notified that he would be terminated for cause and that he would be provided a dismissal hearing. Stewart, however, submitted his mid-year resignation to the College rather than proceed with the dismissal hearing. Allegedly, the requested resignation, which Stewart provided, was conditioned on a favorable recommendation for future employment which was to be provided to Stewart from Bailey, the college's director.

The District Court noted that Stewart had been aware of his opportunity for an administrative hearing but had rejected it rather than subject himself to the "damaging" facts which would be developed in the hearing. Further, the court noted that Bailey had substantially complied with the due process requirements of Ferguson v. Thomas[71]. The Court in Stewart argued that before a teacher could request or insist on benefiting from due process protections, such a teacher must in some way oppose the proposed termination.

The Court further observed that in Ferguson "it was elemental to the court that some opposition to the termination be forthcoming from the teacher before the due process requirements were necessary."[72] The hearing guidelines developed by the Court in Stewart were as follows:

> In summary, when a nontenured professor is dismissed or not rehired for cause, and the stated causes attack his good name, reputation or integrity so as to possibly deprive him of future state employment, the college has the burden of initiating a hearing where the teacher may challenge the stated causes. But, where there is dismissal without cause, no cause is stated, or the causes cannot be said to offend the teacher's reputation, the initiative is upon the teacher to assert that the cause for dismissal is for a constitutionally impermissible reason and request a hearing.[73]

In another interesting feature of the court's opinion the court observed that terminated faculty who had property rights were entitled to the same due process protections provided to students in cases of disciplinary dismissals:

> (N)ontenured teachers who had an expectancy of reemployment were entitled to the same minimum standards of due process in any termination as had been recognized for students in disciplinary suspensions.[74]

This case was affirmed by the Court of Appeals.

Two of the more recent Fifth Circuit cases on faculty termination are Viverette v. Lurleen B. Wallace State Junior College[75] and Bowling v. Scott.[76] In Viverette, the person terminated was formerly the dean of instruction at the defendant college. Prior to termination, however, he was given new responsibilities which he declined to accept. Before termination he was offered the following due process rights: 1) a detailed list of reasons for the decision to terminate; 2) the names of the witnesses against him and the nature of their testimony; 3) the opportunity to rebut the charges; 4) the right to use his attorney in his defense; and 5) the right to a hearing before an impartial tribunal assessing academic expertise.[77] The Court of Appeals observed that due process required no further procedural protections for Viverette.

In the Bowling case, a tenured professor of English was terminated from the University of Alabama. The procedures used for his termination included the following: 1) He was given a statement of the charges (24 pages) which specified in detail the factual basis for each charge, the names of the witnesses

expected to testify, and the nature of their expected testimony. 2) The professor, along with his counsel, helped pick his hearing committee. Each side was given an unlimited number of challenges for cause and each side had two peremptory challenges. 3) The rules for the conduct of the hearing provided that the University and the professor could each have counsel; that a national AAUP observer would be present; that stenographic reports of the proceedings would be provided to each side; that the burden of proof rested on the University; that broad latitude was permitted re the introduction of evidence ("hearsay" evidence was excluded); and that the hearing committee was to make explicit findings. 4) Witnesses were introduced and examined by both sides. 5) One hundred and sixty-three exhibits were produced. 6) The final hearing committee's recommendation of termination was contained in a twelve page document.

Not surprisingly, the Court of Appeals affirmed the District Court's decision to uphold the procedural sufficiency of Bowling's termination procedures, observing: "The University officials in this case have meticulously adhered to the procedural safeguards outlined in our prior opinions.[78]

Sixth Circuit

In Soni v. Board of Trustees of Tennessee,[79] professor Soni was hired to teach mathematics at the University beginning in September, 1967 through August, 1973. He had taken considerable effort prior to accepting the Tennessee appointment to explore his opportunities for tenure. But for the fact that he was not an American citizen Soni was told he would have received tenure in 1968.

After 1968 he was treated in many ways as a tenured faculty member. For example, he attended faculty meetings and participated in tenure decisions affecting other departmental faculty. He became an American citizen in 1971. In March, 1973, he was notified that his contract would not be renewed after

August, 1973.

Soni was able to demonstrate through a wide variety of letters, notes, and his departmental activity that he had a legitimate interest in continued employment. Accordingly, the District Court found that he had a property right and ordered the University to provide a termination hearing which would provide Soni with minimum due process. Both the District Court and the Court of Appeals noted that due process in these circumstances required notice and a hearing before an appropriate tribunal.

The issue of faculty termination procedures at Murray State University was litigated in the cases of Wells v. Board of Regents of the Murray State University,[80] and Plummer v. Board of Regents, Murray State University.[81] Both cases involved the dismissal of faculty through contract nonrenewal. Murray State University had a well-defined tenure system. In both cases court decisions upheld University decisions. In both the courts found no property interests sufficient to trigger Fourteenth Amendment due process protections such as the provision of a hearing.

Bates v. Sponberg,[82] involved an associate professor at Eastern Michigan University in the field of Aquatic biology. In 1969 and again in 1970, the University contracted with the State of West Virginia to conduct specified biological studies and Bates was named "project leader" for these studies. According to the EMU/West Virginia contract, Bates was to submit specified reports. He refused to submit these reports, however, in order to "protest the University's accounting practices which caused irreparable injury to his professional reputation and reputation in the community."[83] Because the University could not get the reports required under the contract the University instituted proceedings to terminate Bates' employment and Bates was so notified. Faculty termination procedures were specified in the faculty handbook.

Bates' hearing was handled by the Faculty Senate Grievance Committee. Bates appeared at the hearing, presented evidence, and was represented by both legal counsel and an academic advisor. Verbatim tape recordings were made of the hearing and copies were made available to Bates without cost. The hearing committee recommended dismissal but also recommended that Bates, in lieu of termination, be given two weeks to submit his reports. He refused and asked for a full hearing before the Board of Regents. His request was not a request of right as the decision to grant such a hearing was discretionary with the Regents. The Regents refused the hearing and accepted instead the Grievance Committee's report recommending termination. Bates filed suit, claiming due process violations.

In reversing the District Court's decision favorable to Bates, the Court of Appeals noted that Bates did not necessarily have the right to a hearing before the entity holding final authority in his case. Rather, the court stated that the critical question was whether or not Bates had had a meaningful hearing which comported with Fourteenth Amendment due process. The Court of Appeals concluded that Bates had been provided procedural protections which comported with the "minimal procedures of due process."[84]

Another case which dealt with a tenured professor is Potemra v. Ping.[85] Potemra was a tenured economics professor at Ohio University. In 1977 he allegedly began to perform his duties in a deficient manner. Later that same year he was suspended from his duties indefinitely. In July, 1977, he was informed that formal dismissal procedures were being undertaken. These procedures provided him with a termination hearing. At the hearing, Potemra chose to have a fellow economics professor defend him even though he could have chosen to use legal counsel.

In upholding the University's final decision to terminate Potemra, the

District Court set forth what it considered to be the minima of due process:

1. A written statement of the reasons for the proposed dismissal. . . prior to the time any final action is taken.

2. Adequate notice of a hearing at which the teacher may respond to the stated reasons for the proposed . . . action.

3. A hearing at which the teacher must be afforded an opportunity to submit relevant evidence controverting the stated reasons.

4. If the board . . . finds against the teacher . . ., it must state the reason or reasons supporting the decision.[86]

Two other Ohio state universities were involved in faculty termination litigation in the cases of Carr v. Board of Trustees of the University of Akron[87] and Dee Swain v. Board of Trustees[88] (Kent State University). Both cases involved the dismissal of nontenured faculty.

In Carr, a sociology professor was terminated because of his inadequate publication record. He argued that if he had been given the usual five-year period (probationary) to develop his publication efforts such would have been sufficient. The District Court rejected his argument that the stated five-year probationary period created an expectancy of continued employment.

The result in Dee Swain was substantially similar to that of Carr. No property interest was supported which justified Fourteenth Amendment due process protections. Concerning the requirements of due process the Dee Swain court noted that "due process . . . requires that individuals must be given notice and an opportunity to be heard."[89]

Seventh Circuit

In Hostrop v. Board of Junior College District No. 515,[90] the plaintiff was the president of Prairie State College who was discharged by the Board in July, 1970. He held his appointment as president by virtue of a series of contracts. He was to have been employed as president until June, 1972. Allegedly he was terminated because of a memorandum on curriculum which he cir-

culated. He was not provided with any procedural protections. Among other arguments Hostrop argued that his termination was in violation of his Fourteenth Amendment due process rights.

The Court of Appeals[91] found that his due process rights were violated. First, the court found that Hostrop had a protected property right in that he had suffered a midcontract termination. Second, even though the Board had offered Hostrop a hearing which he refused to attend, the court found Hostrop's nonparticipation acceptable inasmuch as the Board had committed itself to the hiring of an interim president prior to the time of Hostrop's hearing. Accordingly, the court found that the Board had prejudged Hostrop before making any hearing available and therefore could not serve as an impartial tribunal.

In concluding that Hostrop had a right to a pretermination hearing and in remanding for damages, the court observed:

> The wrong done plaintiff was not the termination of his employment . . . but the deprivation of his procedural due process right to notice and a hearing. Plaintiff is entitled to damages for that constitutional violation.[92]

Johnson v. Board of Regents of University of Wisconsin System[93] involved tenured faculty members who were dismissed because of financial exigency. Those terminated complained that their dismissal was in violation of their Fourteenth Amendment procedural due process rights.

The court agreed that the faculty members had a property interest that would "prevent termination or lay-off, for whatever reason, without some minimal procedural protection . . ." The Court did not grant the judicial relief requested by the faculty members but did hold that each terminated faculty member should be entitled to the following minimal procedures:

> Furnishing each plaintiff with a reasonably adequate written statement of the basis for the initial decision to lay-off; furnishing each plaintiff with a reasonably adequate description of the manner in which the initial decision had been arrived at; making a reasonably

> adequate disclosure to each plaintiff of the information and the date upon which the decision-makers had relied; and providing each plaintiff the opportunity to respond.[94]

Stebbins v. Weaver[95] involved the termination of an assistant professor of mathematics at the University of Wisconsin-Milwaukee. Prior to his termination he had received two, three-year contracts. His reputation was that he was a good teacher. He also had several academic publications and was involved in the community. Nevertheless, he was denied tenure.

Stebbins contested this denial of tenure in court. The District Court, after observing that the state could investigate the academic qualifications of faculty, also observed that:

> (T)he interest of the plaintiff in the tenure decision is also substantial. To be denied this virtual lifetime guarantee is a significant loss. Balancing these interests of the state and the plaintiff, I conclude that plaintiff was constitutionally entitled to minimal due process.[96]

In essence, the District Court held that a person eligible to be tenured is entitled to minimum due process but declined to agree with Stebbins' "no due process" claim.

The District Court noted that Stebbins had been accorded the following procedural rights by the university: "a statement of the reasons why the university intended not to promote him; notice of a hearing at which he could respond to the stated reasons; and a hearing."[97] The Court of Appeals[98] affirmed the decision of the District Court noting that Stebbins had no property right to continued employment sufficient to require Fourteenth Amendment due process protections.

Eighth Circuit

One of the leading due process cases in this circuit is Esteban v. Central Missouri State College[99] wherein several students were suspended from the college. The suspended students sought reinstatement and other appropriate

judicial relief. The District Court ordered that the students be given a new hearing which accorded them the following procedural protections:

> 1) a written statement of the charges to be furnished each plaintiff at least 10 days prior to the date of the hearing; 2) the hearing shall be conducted before the President of the college; 3) plaintiffs shall be permitted to inspect in advance of such hearing any affidavits or exhibits which the college intends to submit at the hearing; 4) plaintiffs shall be permitted to have counsel present with them at the hearing to advise them; 5) plaintiffs shall be afforded the right to make such showing by way of affidavits, exhibits, and witnesses as they desire; 6) plaintiffs shall be permitted to hear the evidence presented against them and plaintiffs (not their attorney) may question at the hearing any witness who gives evidence against them; 7) the President shall determine the facts of each case solely on the evidence presented at the hearing therein and shall state in writing his finding as to whether or not the student charged is guilty of the conduct charged and the disposition to be made, if any, by way of disciplinary action; 8) either side may, at its own expense, make a record of the events at the hearing.[100]

After the hearing provided for the terminated students, the students were again suspended and they appealed that action. At the District Court, their complaint was dismissed. The Court of Appeals affirmed the dismissal and as part of its holding specified its expectations with regard to procedural due process:

> We do hold . . . that procedural due process must be afforded . . . by way of adequate notice, definite charge, and a hearing with opportunity to present one's own side of the case and with all necessary protective measures.[101]

To guide the course of future student disciplinary litigation in the District Court (W.D.Mo.), such court issued a General Order on Judicial Standards, Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education.[102] Inter alia, the court observed that Fourteenth Amendment procedural due process requires several minimum procedural requirements as follows:

> Three minimal requirements apply in cases of severe discipline, growing out of fundamental conceptions of fairness implicit in procedural due process. First, the student should be given adequate notice

> in writing of the specific ground or grounds and the nature of the evidence on which the disciplinary proceedings are based. Second, the student should be given an opportunity for a hearing in which the disciplinary authority provides a fair opportunity for hearing of the student's position, explanations and evidence. The third requirement is that no disciplinary action be taken on grounds which are not supported by any substantial evidence.[103]

This en banc order, then, along with Esteban, appears to delimit student disciplinary due process concerns within this circuit. The case of Greenhill v. Bailey[104] also involves student dismissal but for academic rather than disciplinary reasons.

Greenhill was accepted at the University of Iowa College of Medicine as a junior. He had previously attempted to gain admission thereto but was twice denied admission. Because of subsequent deficient academic performance he was dismissed from the College of Medicine.

After he was dismissed the College of Medicine sent a notice of his dismissal to the Liaison Committee on Medical Education of the Association of American Medical Colleges. Along with this notice of dismissal the College added the notation that the dismissal was "'due to poor academic standing' and that the apparent reason therefore was 'lack of intellectual ability or insufficient preparation'."[105] The District Court rejected Greenhill's argument that his dismissal deprived him of procedural due process.

The Court of Appeals found that Greenhill's dismissal, coupled with the notification to the liasion committee, was a violation of his liberty interest in due process and reversed the District Court:

> We think that, at the very least, Greenhill should have been notified in writing of the alleged deficiency in his intellectual ability . . . and should have been accorded an opportunity to appear personally to contest such an allegation.[106]

Two interesting factual situations are presented in the cases of Brouillette v. Board of Directors of Merged Area IX, alias Eastern Iowa

Community College[107] and Bruce v. Board of Regents for the Northwest Missouri State University.[108] In the first case, Brouilette was a nontenured community college professor who was terminated from his employ by the College. He argued that his termination violated Fourteenth Amendment due process. In the District Court summary judgment was granted for the College.

The Court of Appeals observed that Brouillette could not claim constitutional due process protection for a hearing because he held no property interest in continued employment. Further, he had been given two hearings, one private, at the college's initiative, and one public, in accordance with state law. The relevant Iowa state statue, however, did not specify the exact procedures to be used in the public hearing. Brouillette claimed he was entitled to specific due process procedures omitted in both of his hearings.

While affirming the decision of the District Court, the Court of Appeals did set forth its minimal requirements of due process:

> (1) clear and actual notice of the reasons for termination in sufficient detail to enable him or her to present evidence relating to them; (2) notice of both the names of those who have made allegations against the teacher and the specific nature and factual basis for the charges; (3) a reasonable time and opportunity to present testimony in his or her own defense; and (4) a hearing before an impartial board of tribunal.[109]

In Bruce, the plaintiff was an instructor in speech at Northwest Missouri State University. He was employed in 1966 and was on year to year contracts through 1970-71. In September, 1969, Bruce applied for a sabbatical leave to be taken in 1971-1972. This sabbatical contract, was approved by the Regents in September, 1970. Prior to September, 1970 he had also been approved for a promotion to assistant professor. During the month of September, 1970, Bruce also came up for tenure. Following departmental procedures Bruce was unanimously recommended for tenure and a formal departmental recommendation to that effect was forwarded to the Dean of Faculties. Two days thereafter Bruce and his new

department chairman had a serious disagreement. The chairman, acting on an ad hoc basis and outside the scope of University procedures, then attempted to call back his previous tenure recommendation. He also convinced another department member to change a previous tenure vote so that a second tenure recommendation, this time unfavorable to Bruce, could be sent to the faculty dean. The department chairman also successfully convinced the Regents to terminate Bruce's employ and to rescind the previously approved sabbatical contract. The District Court granted Bruce's motion for summary judgment holding that he was entitled to Fourteenth Amendment procedural due process rights. Since the University's Faculty Handbook detailed procedures for those faculty removed during the period of the contract, the District Court did not specify any additional due process procedures. The court did note, however, "that plaintiff had a constitutional right to a hearing . . ."[110]

Ninth Circuit

In Peacock v. Board of Regents of Universities and State Colleges of Arizona,[111] plaintiff Peacock joined the faculty of the University of Arizona College of Medicine in 1969 as a professor of surgery and head of the surgery department. He served in both capacities for about four years under a series of year to year contracts. During the last year or two of those four years his effectiveness as department head came into question. Considerable time had been spent by the College dean encouraging Peacock to resign as department head but not as professor of surgery. Peacock refused to resign and was terminated as department head. He never agreed to the termination and strongly protested such. Ultimately the University offered Peacock a hearing to determine the appropriateness of the administrative/ department head termination. Peacock refused this offer. After another interim surgery head was appointed trouble between Peacock and the University increased. Ultimately, Peacock was suspended

as a professor with pay and advised of a variety of grievance procedures.

Peacock sought both money damages and equitable relief (reinstatement as department head) in the District Court. He argued that he was entitled to his position as department head and further that his dismissal, without a termination hearing, violated due process.

The District Court concluded that under his contract with the University, Peacock did have a property interest in continuing as department head. When he was terminated as department had without due process his Fourteenth Amendment due process rights were violated. The District Court ordered Peacock reinstated to his position as surgery head, pending a posttermination hearing, although it did permit department head responsibilities to be exercised by others.

Seitz v. Clark[112] is representative of cases already discussed in other circuits. Seitz was hired as a visiting nontenured assistant professor of political science at the University of Oregon. All notices of his employment and all other official communication expressly stated that the contract was for one year only. His contract was not renewed and Seitz complained that his notice of nonrenewal was not adequate. After observing that Seitz had no property interest sufficient to warrant a hearing the court agreed with the University's contention that its notice of termination was adequate.

The cases of Bignall v. North Idaho College[113] and Decker v. North Idaho College[114] involve varying types of faculty termination concerns.

Mrs. Bignall taught at the college in a part-time capacity from 1961-1969 and as a full-time instructor thereafter. In response to a Board mandate to reduce the faculty by two, Mrs. Bignall was notified in January 1973 that she would not be continued as an instructor for the subsequent year. Bignall asked for a hearing but the College declined arguing that she was a probationary employee. After numerous legal actions and administrative procedures, Mrs.

Bignall was given a full hearing by the District Court regarding the issues she contested. The District Court found that the College had declined to renew her contract for valid nondiscriminatory reasons and held in favor of the College. The appeals court affirmed noting that Mrs. Bignall also had been offered an administrative hearing by the College but that she had declined to participate in this hearing.

Like Bignall, Decker involved the dismissal of a faculty member who had taught at the College for six years. Decker had not been given a termination hearing. He filed suit claiming that his lack of a hearing was a violation of his Fourteenth Amendment due process rights. The District Court agreed that Decker had de facto tenure but did not order reinstatement. Rather, it conducted a hearing and awarded monetary damages equivalent to one year's pay. The appeals court was satisfied that:

> "the district court trial more than adequately compensated for the fact that the appellant did not receive a pretermination hearing; he there was awarded the complete panoply of procedural rights."[115]

Bignall and Decker have several similarities. Both Bignall and Decker were found to have "de facto" tenure. Both litigants were able to show procedural defects in the termination procedures used by North Idaho College. Bignall, for example, was able to show that she had received inadequate notice: "We agree... that... the College gave them inadequate notice."[116] Decker, on the other hand, was able to show that "the college's failure to provide him with a hearing prior to dismissal was a violation of... procedural due process requirements."[117] In both, the procedural defects were apparently corrected by a full de novo trial at the District Court level:

> Following the Board's hearing, the district court held a de novo evidentiary trial. The Bignalls received the complete panoply of procedural rights. We conclude that the total procedure, including intervention by the district court, did provide the Bignalls with substantial due process.118

With regard to Decker:

> The district court trial more than adequately compensated for the fact that the appellant did not receive a pretermination hearing; he there was accorded the complete panoply of procedural rights.[119]

In Davis v. Oregon State University,[120] Davis was employed in 1968 as an associate professor of physics at Oregon State after several years of teaching at the University of Washington. He was terminated in 1974 after his department could not reach a positive decision to offer him tenure. Davis argued that his termination without a hearing infringed upon both his liberty and property interests and as such, violated his right to procedural due process. In the District Court, Oregon State was awarded summary judgment. Prior to the appeal to the Court of Appeals, Davis died.

The Court of Appeals, after noting that a liberty interest does not survive death but that a property interest does, noted that Oregon State had a formal, written tenure system. As a result, Davis' de facto tenure argument was not accepted. Accordingly there was no procedural due process violation.

Haimowitz v. University of Nevada[121] involves a piano instructor who was employed by the University from 1965 through 1971, the year of his termination. He filed suit against the University claiming that his property and liberty could not be taken from him without procedural due process. He further argued that his non-renewal resulted because of his exercise of First Amendment rights and further, because of religious bias.

The Court of Appeals found that the University had a written tenure system and that at all times Haimowitz knew that he was a probationary employee. The court essentially concluded that as a matter of law, if a formal tenure system exists, there cannot be a de facto tenure system. Accordingly, it did not support Haimowitz' due process argument. Nevertheless, the court did reverse and remand the case for further proceedings on the First Amendment issues.

Tenth Circuit

In Prebble v. Brodrick,[122] professor Prebble was an economics professor at the University of Wyoming. After three years of teaching he was notified that he was denied tenure. Under University policy a person denied tenure could teach a fourth terminal year while seeking new employment. During his fourth year Prebble missed several of his classes. After a termination hearing by the appropriate University committee Prebble was asked to resign from teaching. Prebble's complaint was that his termination hearing was inadequate.

Responding to the sufficiency of the due process procedures used in Prebble's termination, the court observed:

> (W)e feel that the procedures followed here were proper and necessary and sufficient. (emphasis added) Plaintiff was given notice of the charges and an opportunity to present his side of the story, after his general denial of the charges. He was permitted to have counsel present at the hearing. He was permitted to confront and cross examine witnesses appearing against him. He was given the right to testify himself and to present witnesses in his behalf. Prebble was furnished a written decision stating the reasons for the committee's conclusion.[123]

VI. Summary

What conclusion regarding the specific requirements of procedural due process can be drawn from this analysis of cases?

With regard to United States Supreme Court Cases, the two primary due process components appear to be numbers one (an oral or written statement of the charges which must be specific as well as inclusive as to the particulars of the forthcoming hearing) and five (an opportunity to be heard in one's own defense before competent and impartial persons who have the power to expel, suspend, or dismiss--includes the right to present witnesses and documentary evidence). Due process component number one was referred to in about seventy percent of decided cases while due process component number five was referred to in all of the decided cases. Other due process components are referred to in less than thirty

percent of the decided cases. Several due process components are not referred to at all.

In the First Circuit, it does not appear possible to discern specific due process components required as the only relevant case decided does not clearly set forth due process requirements.

Second Circuit cases do set forth specific due process components. Similar to the Supreme Court cases, both due process components number one and number five are referred to in each decided case. The only other due process components referred to (in only one case) are components number six (an opportunity to bring counsel to the hearing) and number seven (an opportunity to question adverse witnesses).

With regard to the Third Circuit, due process components number one and number five again are quite prominent. Due process component number five is referred to in sixty percent of the cases and due process component number one is referred to in fifty percent of the cases. Other due process components are referred to no more frequently than in thirty-five percent of the cases.

Fourth Circuit cases are similar to the other previously discussed circuits. Due process components number one and number five are mentioned in eighty percent of the decided cases. Several other due process components appear more frequently, however, in this circuit than in the three previous circuits. Due process components number two (timely notice of charges and hearing) and number seven (opportunity to question adverse witnesses) are referred to in forty percent of the decided cases. Due process component number six (right to counsel) appears in sixty percent of the cases. Nevertheless, components number one and number five are still dominant.

In the Fifth Circuit, only due process components number one and number five are referred to in more than sixty percent of the cases. Components number

two (timely notice), number three (disclosure of institution's evidence), and number four (provision of names and nature of testimony) are discussed in forty-five percent of the cases. No other component (all are referred to at least once) is referred to in more than twenty percent of the cases.

In the Sixth and Seventh Circuits, again, due process components number one and number five dominate, appearing in more than fifty percent of the cases. Due process component two is referred to in thirty percent of the cases. No other component is referred to in more than fifteen percent of the cases.

Eighth Circuit cases show a clear preference for due process components number one and number five. Both components are referred to in every decided case. The next most frequent due process component is number three (disclosure of institution's evidence), referred to in sixty percent of the cases. Similar results can also be found in Ninth Circuit Cases. Since only one relevant case appears in the Tenth Circuit, it is not possible to compare due process components. The one decided case, however, did refer to components number one, five, six and seven.

Aggregating the cases, as within the circuits, due process components number one and number five are clearly predominant. Component number one appears in more than sixty-five percent of the cases, and number five appears in more than seventy percent of the cases. Component number two (timely notice) is referred to in more than thirty percent of the cases. No other component is referred to in more than twenty-five percent of the cases, although no component is referred to in less than ten percent of the decided cases.

Two interesting sidelights should be noted. First, no attempt is made in this study to account for differences in judicial treatment of due process components in cases of the same circuit. Second, no attempt is made in this study to account for differences in the treatment of due process components between

circuits. The Fifth Circuit, for example, appears to represent the most active judicial circuit in these matters. Both intra-judicial and inter-judicial circuit differences appear to be worthy of additional study.

To conclude, from a review of these relatively recent due process decisions, it is possible to ascertain the procedural due process requirements in public colleges and universities. Further, it is possible to observe that the legal requirements for "an oral or written statement of the charges" and "an opportunity to be heard in one's own defense" clearly predominate over other procedural due process components.

TABLE 1

SELECTED UNITED STATES SUPREME COURT CASES INVOLVING PROCEDURAL DUE PROCESS: 1970-1979

Case Name and Citation (listed chronologically)	Date of Decision
Goldberg v. Kelly, 397 U.S. 254	1970
Board of Regents of State Colleges v. Roth, 408 U.S. 564	1972
Perry v. Sindermann, 408 U.S. 593	1972
Arnett v. Kennedy, 416 U.S. 134	1974
Goss v. Lopez, 419 U.S. 565	1975
Matthews v. Eldridge, 424 U.S. 319	1976
Horowitz v. Board of Curators of University of Missouri, 435 U.S. 78	1978

TABLE 2

SELECTED FEDERAL CIRCUIT COURT CASES ANALYZING PROCEDURAL DUE PROCESS, PRIMARILY INVOLVING INSTITUTIONS OF PUBLIC HIGHER EDUCATION, BY COURT OF DECISION AND DATE OF MOST RECENT REPORT

Case Name (listed alphabetically)	Court of Decision		Date of Decision					
	District Court	Appeal Court	1975	1976	1977	1978	1979	Other
1st Circuit								
Willens v. University of Massachusetts, 570 F. 2d 403 (1st Cir. 1978)		X				X		
2d Circuit								
Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (E.D. N.Y. 1976)	X			X				
Klein v. Board of Higher Education of the City of New York, 434 F. Supp. 1113 (S.D. N.Y. 1977)	X				X			
3rd Circuit								
Chung v. Park, 514 F. 2d 382 (3rd Cir. 1975)		X	X					

TABLE 2--Continued

Case Name (listed alphabetically)	Court of Decision: District Court	Court of Decision: Appeal Court	Date of Decision: 1975	1976	1977	1978	1979	Other
Diluigi v. Kafkalas, 584 F. 2d 22 (3rd Cir. 1978)		X				X		
Keddie v. Pennsylvania State University, 412 F. Supp. 1264 (M.D. Pa. 1976)	X			X				
Roseman v. Indiana University of Pennsylvania, at Indiana, 520 2d 1364 (3rd Cir. 1975)		X	X					
Ross v. Pennsylvania Sate University, 445 F. Supp. 147 (M.D. Pa. 1978)	X					X		
Skehan v. Board of Trustees of Bloomsburg State College, 590 F. 2d 470 (1978)		X				X		
4th Circuit								
Kilcoyne v. Morgan, 535 F. 2d 1250 (4th Cir. 1976)		X		X				

TABLE 2--Continued

Case Name (listed alphabetically)	Court of Decision: District Court	Court of Decision: Appeal Court	Date of Decision: 1975	1976	1977	1978	1979	Other
Phillips v. Puryear, 403 F. Supp. 80 (W.D. Va. 1975)	X		X					
Shaw v. Board of Trustees of Frederick Community College, 549 F. 2d 929 (4th Cir. 1976)		X		X				
Tyler v. College of William and Mary, 429 F. Supp. 29 (E.D. Va. 1977(	X				X			
Kowtoniuk v. Quarles, 528 F. 2d 1161 (4th Cir. 1975)		X	X					
5th Circuit								
Assaf v. University of Texas System, 557 F. 2d 822 (5th Cir. 1977)		X			X			
Bowling v. Scott, 587 F. 2d 229 (5th Cir. 1979)		X					X	
Chambliss v. J.R. Foote, 562 F. 2d 1015		X			X			

TABLE 2--Continued

Case Name (listed alphabetically)	Court of Decision		Date of Decision					
	District Court	Appeal Court	1975	1976	1977	1978	1979	Other
Citron v. Jackson State University, 577 F. 2d 1132 (5th Cir. 1978)		X				X		
Dixon v. Alabama State Board of ducation, 294 F. 2d 150 (5th Cir. 1961)	X							
Jenkins v. Louisiana State Board of Education, 506 F. 2d 992 (5th Cir. 1975)		X	X					
Kaprelian v. Texas Woman's University, 509 F. 2d 133 (5th Cir. 1975)		X	X					
Megill v. Board of Regents of the State of Florida, 541 F. 2d 1073 (5th Cir. 1976)		X		X				
Stewart v. Bailey, 556 F. 2d 281 (5th Cir. 1977)		X			X			
Viverette v. Lurleen B. Wallace State Junior College, 587 F. 2d 191 (5th Cir. 1979)		X					X	

TABLE 2--Continued

Case Name (listed alphabetically)	Court of Decision: District Court	Court of Decision: Appeal Court	Date of Decision: 1975	1976	1977	1978	1979	Other
Wood v. University of Southern Mississippi, 539 F. 2d 529 (5th Cir. 1976)		X		X				
6th Circuit								
Bates v. Sponberg, 547 F. 2d 325 (6th Cir. 1976)		X		X				
Carr v. Board of Trustees of the University of Akron, 465 F. Supp. 886 (N.D. Ohio, E.D., 1979)	X						X	
Dee Swain v. Board of Trustees, 446 F. Supp. 120 (N.D. Ohio, E.D., 1979)	X						X	
Plummer v. Board of Regents, Murrary State University, 552 F. 2d 717 (6th Cir. 1977)		X			X			
Potemra v. Ping, 462 F. Supp. 328 (S.D. Ohio, E.D., 1978)	X					X		
Soni v. Board of Trustees of University of Tennessee, 513 F. 2d 347 (6th Cir. 1975)		X	X					

TABLE 2--Continued

Case Name (listed alphabetically)	Court of Decision: District Court	Court of Decision: Appeal Court	Date of Decision: 1975	1976	1977	1978	1979	Other
Wells v. Board of Regents of the Murray State University, 545 F. 2d 15 (6th Cir. 1976)		X		X				
7th Circuit								
Hostrop v. Board of Junior College District No. 515, 523 F. 2d 569 (7th Cir. 1975)		X	X					
Johnson v. Board of Regents of University of Wisconsin System, 510 F. 2d 975 (7th Cir. 1975)		X	X					
Stebbins v. Weaver, 537 F. 2d 939 (7th Cir. 1976)		X		X				
8th Circuit								
Brouillette v. Board of Directors of Merged Area IX, Alias Eastern Iowa Community College, 519 F. 2d 126 (8th Cir. 1975)		X	X					
Bruce v. Board of Regents for the Northwest Missouri State University,								

TABLE 2--Continued

Case Name (listed alphabetically)	Court of Decision: District Court	Court of Decision: Appeal Court	Date of Decision: 1975	1976	1977	1978	1979	Other
414 F. Supp. 559 (W.D. Mo. 1976)	X			X				
Esteban v. Central Missouri State College, 415 F. 2d 1077 (8th Cir. 1969)		X						
General Order on Judicial Standards, Procedure and Substance in Review of Student Discipline in Tax-Supported Institutions of Higher Education, 45 FRD 133 (W.D. Mo. en banc 1968)	X							
Greenhill v. Bailey, 519 F. 2d 5 (8th Cir. 1975)		X	X					
9th Circuit								
Bignall v. North Idaho College, 538 F. 2d 243 (9th Cir. 1976)		X		X				
Davis v. Oregan State University, 591 F. 2d 493 (9th Cir. 1978)		X				X		
Decker v. North Idaho College, 552 F. 2d 872 (9th Cir. 1977)			X			X		

TABLE 2--Continued

Case Name (listed alphabetically)	Court of Decision: District Court	Court of Decision: Appeal Court	Date of Decision: 1975	1976	1977	1978	1979	Other
Haimowitz v. University of Nevada, 579 F. 2d 526 (9th Cir. 1978)		X				X		
Peacock v. Board of Regents of the Universities and State College of Arizona, 597 F. 2d 163 (9th Cir. 1979)		X						X
10th Circuit								
Prebble v. Brodrick, 535 F. 2d 605 (10th Cir. 1976)		X		X				

TABLE 3

SELECTED UNITED STATES SUPREME COURT CASES AND PROCEDURAL DUE PROCESS COMPONENTS: 1970-1979

Case Name (listed chronologically)	Due Process Components									
	1	2	3	4	5	6	7	8	9	10
Goldberg v. Kelly, 397 U.S. 254 (1970)	X	X			X		X			
Board of Regents of State Colleges v. Roth, 408 U.S. 564					X					
Perry v. Sindermann, 408 U.S. 593 (1972)					X					
Arnett v. Kennedy, 416 U.S. 134 (1974)	X	X			X				X	X
Goss v. Lopez, 419 U.S. 565 (1975)	X		X		X					
Matthews v. Eldridge, 424 U.S. 319 (1976)	X				X					
Horowitz v. Board of Curators of University of Missouri, 435 U.S. 78 (1978)	X				X					

TABLE 4

SELECTED FEDERAL CIRCUIT CASES AND PROCEDURAL DUE PROCESS COMPONENTS: 1975-1979

Case Name (listed alphabetically)	Due Process Components									
	1	2	3	4	5	6	7	8	9	10
1st Circuit										
Willens v. University of Massachusetts (1978)	NOT CLEARLY SET FORTH									
2nd Circuit										
Ekelund v. Secretary of Commerce (1976)	X				X	X	X			
Klein v. Board of Higher Education of the City of New York (1977)	X				X					
3th Circuit										
Chung v. Park (1975)	X	X	X	X	X	X	X	X	X	X
Diluigi v. Kafkalas (1978)	X	X		X						
Keddie v. Pennsylvania State University (1976)	NOT CLEARLY SET FORTH									
Roseman v. Indiana University of Pennsylania, at Indiana (1975)	NOT CLEARLY SET FORTH									
Ross v. Pennsylvania State University (1978)	X				X					

TABLE 4--Continued

Case Name (listed alphabetically)	Due Process Components 1	2	3	4	5	6	7	8	9	10
Skehan v. Board of Trustees of Bloomsburg State College (1978)					X					
4th Circuit										
Kilcoyne v. Morgan (1976)	NOT CLEARLY SET FORTH									
Kowtoniuk v. Quarles (1975)	X	X			X	X	X			
Phillips v. Puryear (1975)	X				X	X	X			
Shaw v. Board of Trustees of Frederick Community College (1976)	X	X			X	X				
Tyler v. College of William and Mary (1977)	X				X					
5th Circuit										
Assaf v. University of Texas System (1977)	X	X	X	X	X					
Bowling v. Scott (1979)	X	X	X	X	X	X	X	X	X	
Chambliss v. J.R. Foote (1977)	NOT CLEARLY SET FORTH									
Citron v. Jackson State University (1978)	NOT CLEARLY SET FORTH									
Dixon v. Alabama State Board of Education (1961)	X	X	X	X	X				X	X

TABLE 4--Continued

Case Name (listed alphabetically)	Due Process Components									
	1	2	3	4	5	6	7	8	9	10
Jenkins v. Louisiana State Board of Education (1975)	X				X					
Kaprelian v. Texas Women's University (1975)	NOT CLEARLY SET FORTH									
Megill v. Board of Regents of the State of Florida (1976)	X			X	X	X		X		
Stewart v. Bailey (1977)	X	X	X	X	X					
Viverette v. Lurleen B. Wallace State Junior College (1979)	X	X	X	X	X	X				
Wood v. University of Southern Mississippi (1976)	NOT CLEARLY SET FORTH									
6th Circuit										
Bates v. Sponberg (1976)	X				X	X			X	X
Carr v. Board of Trustees of the University of Akron (1979)	NOT CLEARLY SET FORTH									
Dee Swain v. Board of Trustees (1979)	X				X					
Plummer v. Board of Regents, Murray State University (1977)	NOT CLEARLY SET FORTH									
Potemra v. Ping (1978)	X	X			X		X			

Footnotes

[1]By definition, then, cases involving the termination of faculty from private colleges and universities have generally been excluded. In addition, public institution cases dealing with faculty termination based on retirement guidelines and/or financial exigency have also been excluded.

[2]Kaprelian v. Texas Women's University, 509 F. 2d 133 (5th Cir. 1975).

[3]Henry C. Black, Black's Law Dictionary, Revised 4th Edition (St. Paul, Minn.: West Publishing Company, 1968), p. 590.

[4]367 U.S. 886 (1961).

[5]Ibid., p. 895.

[6]408 U.S. 471 (1972).

[7]Ibid., p. 481.

[8]424 U.S. 319 (1976).

[9]Ibid., p. 335.

[10]See, for example, Kern Alexander and Erwin S. Solomon, College and University Law (Charlottesville, Va.: The Michie Company, 1972); John S. Brubacher, The Courts and Higher Education (San Francisco: Jossey-Bass Inc., 1971); Patricia A. Hollander, Legal Handbook for Educators (Boulder, Colo.: Westview Press, 1978); and William A. Kaplin, The Law of Higher Education (San Francisco: Jossey-Bass Publishers, 1978).

[11]397 U.S. 254 (1970). While the setting forth of cases in this and subsequent sections will focus primarily on the way the courts have developed the concept of due process, it should be noted that these cases could be distinguished on other grounds. Not all of the cases, for example, are higher education faculty termination cases. Some deal with student discipline matters and others with academic due process. Still others, such as this case, focus on due process outside of the content of higher education. All, however, are of some help in understanding how the courts have attempted to define procedural due process.

[12]Ibid., pp. 267, 268.

[13]397 U.S. 280 (1970).

[14]408 U.S. 564 (1972).

[15]408 U.S. 593 (1972).

[16]408 U.S. 564 (1970), p. 570.

[17]416 U.S. 134 (1974).

[18]Ibid., pp. 140, 141.

19419 U.S. 565 (1975).

[20]Ibid., p. 581.

[21]424 U.S. 319 (1976).

[22]Ibid., p. 333.

[23]Ibid., p. 334.

[24]Ibid., p. 348.

[25]435 U.S. 78 (1978).

[26]Ibid., pp. 84, 85.

[27]419 U.S. 565 (1975), p. 581.

[28]435 U.S. 78 (1978), pp. 87-90.

[29]570 F. 2d 403 (1st Cir. 1978).

[30]418 F. Supp. 102 (E.D.N.Y. 1976).

[31]434 F. Supp. 1113 (S.D.N.Y. 1977).

[32]Ibid., p. 1119.

[33]353 F. Supp. 542 (M.D. Pa. 1973); 358 F. Supp. 430 (M.D. Pa. 1973); vacated and remanded, 501 F. 2d 31 (3rd Cir. 1974); vacated and remanded, 421 U.S. 983 (1973); 538 F. 2d 53 (3rd Cir. 976); cert. denied, 429 U.S. 979 (1976); 431 F. Supp. 1379 (M.D. Pa. 1977); 436 F. Supp. 657 (M.D. Pa. 1977); affirmed in part, remanded in part, 590 F. 2d 470 (3rd Cir. 1978); review denied, 48 L.W. 3211 (1979).

[34]590 F. 2d 470 (3rd Cir. 1978).

[35]358 F. Supp. 430 (M.D. Pa. 1973), p. 434.

[36]369 F. Supp. 959 (M.D. Pa. 1974); 377 F. Supp. 524 (M.D. Pa. 1974); affirmed 514 F. 2d 382 (3rd Cir. 1975).

[37]377 F. Supp. 524 (M.D. Pa. 1974), p. 529.

[38]514 F. 2d 382 (3rd Cir. 1975), p. 386.

[39]382 F. Supp. 1328 (W.D. Pa. 1974); affirmed, 520 F. 2d 1364 (3rd Cir. 1975); Cert. denied, 424 U.S. 921 (1976).

[40]412 F. Supp. 1264 (M.D. Pa. 1976).

[41]437 F. Supp. 863 (M.D. Pa. 1977); vacated, 584 F. 2d 22 (3rd Cir. 1978).

[42]437 F. Supp. 863 (M.D. Pa. 1977), p. 871.

[43]584 F. 2d 22 (3rd Cir. 1978).

[44]445 F. Supp. 147 (M.D. Pa. 1978).

[45]Ibid., p. 153.

[46]Ibid., pp. 153, 154.

[47]403 F. Supp. 80 (W.D. Va. 1975).

[48]405 F. Supp. 828 (E.D. N.C. 1975); affirmed, 530 F. 2d 968 (4th Cir. 1975); affirmed in part, vacated and remanded, 535 F. 2d 1250 (4th Cir. 1976).

[49]429 F. Supp. 29 (E.D. Va. 1977).

[50]396 F. Supp. 872 (D. Md. 1975); affirmed, 549 F. 2d 929 (4th Cir. 1976).

[51]396 F. Supp. 872 (D. Md. 1975), p. 887.

[52]528 F. 2d 1161 (4th Cir. 1975).

[53]Ibid., p. 1165.

[54]186 F. Supp. 945 (M.D. Ala. 1960); reversed and remanded, 294 F. 2d 150 (5th Cir. 1961).

[55]294 F. 2d 150 (5th Cir. 1961), p. 159.

[56]399 F. Supp. 1245 (S.D. Tex. 1975); appeal dismissed, 557 F. 2d 822 (5th Cir. 1977).

[57]430 F. 2d 852 (5th Cir. 1970).

[58]Ibid., p. 856.

[59]506 F. 2d 992 (5th Cir. 1975).

[60]Ibid., p. 1000.

[61]Ibid., p. 1003.

[62]509 F. 2d 133 (5th Cir. 1975).

[63]Ibid., p. 139.

[64]541 F. 2d 1073 (5th Cir. 1976).

[65]Ibid., p. 1079.

[66]Ibid., p. 1080.

[67]539 F. 2d 529 (5th Cir. 1976).

[68]421 F. Supp. 12 (E.D. La. 1976); affirmed, 562 F. 2d 1015 (5th Cir. 1977).

[69]456 F. Supp. 3 (S.D. Miss. 1977); affirmed without opinion, 577 F. 2d 1132 (5th Cir. 1978).

[70]396 F. Supp. 1381 (N.D. Ala. 1975); affirmed, 556 F. 2d 281 (5th Cir. 1977).

[71]430 F. 2d 852 (5th Cir. 1970).

[72]396 F. Supp. 1381 (N.D. Ala. 1975), p. 1383.

[73]Ibid., p. 1385.

[74]Ibid., pp. 1382, 1383.

[75]587 F. 2d 191 (5th Cir. 1979).

[76]587 F. 2d 229 (5th Cir. 1979).

[77]587 F. 2d 191 (5th Cir. 1979), p. 193.

[78]587 F. 2d 229 (5th Cir. 1979), p. 231.

[79]376 F. Supp. 289 (E.D. Tenn. 1974); affirmed, 513 F. 2d 347 (6th Cir. 1975); cert. denied, 426 U.S. 919 (1976).

[80]545 F. 2d 15 (6th Cir. 1976).

[81]552 F. 2d 717 (6th Cir. 1977).

[82]547 F. 2d 325 (6th Cir. 1976).

[83]Ibid., p. 327.

[84]Ibid., p. 333.

[85]462 F. Supp. 328 (S.D. Ohio, E.D., 1978).

[86]Ibid., p. 332.

[87]465 F. Supp. 886 (N.D. Ohio, E.D., 1979).

[88]466 F. Supp. 120 (N.D. Ohio, E.D., 1979).

[89]Ibid., p. 124.

[90]337 F. Supp. 977 (N.D. Ill., E.D., 1972); reversed and remanded, 471 F. 2d 488 (7th Cir. 1972); cert. denied, 411 U.S. 967 (1973); 399 F. Supp. 609 (N.D. Ill., E.D., 1974); affirmed in part and reversed and remanded in part, 523 F. 2d 569 (7th Cir. 1975); cert. denied, 425 U.S. 963 (1976).

[91]523 F. 2d 569 (7th Cir. 1975).

[92]Ibid., p. 579.

[93]377 F. Supp. 227 (W.D. Wisc. 1974); affirmed, 510 F. 2d 975 (7th Cir. 1975).

[94]377 F. Supp. 227 (W.D. Wisc. 1974); p. 240.

[95]396 F. Supp. 104 (W.D. Wisc. 1975); affirmed, 537 F. 2d 939 (7th Cir. 1976).

[96]396 F. Supp. 104 (W.D. Wisc. 1975), p. 112.

[97] Ibid.

[98]537 F. 2d 939 (7th Cir. 1976).

[99]277 F. Supp. 649 (W.D. Mo. 1967); 290 F. Supp. 622 (W.D. Mo. 1968); affirmed, 415 F. 2d 1077 (8th Cir. 1969).

[100]277 F. Supp. 649 (W.D. Mo. 1967), p. 651, 652.

[101]415 F. 2d 1077 (8th Cir. 1969), p. 1089.

[102]45 FRD 133 (W.D. Mo. en banc, 1968).

[103]Ibid., p. 147.

[104]378 F. Supp. 632 (S.D. Ia. 1974); reversed and remanded, 519 F. 2d 5 (8th Cir. 1975).

[105]519 F. 2d 5 (8th Cir. 1975), p. 7.

[106]Ibid., p. 9.

[107]519 F. 2d 126 (8th Cir. 1975).

[108]414 F. Supp. 559 (W.D. Mo. 1976).

[109]519 126 (8th Cir. 1975), p. 128.

[110]414 F. Supp. 559 (W.D. Mo. 1976).

[111]380 F. Supp. 1081 (D. Ariz. 1974); 510 F. 2d 1324 (9th Cir. 1975); cert. denied, 95 S. Ct. 2668 (1975); 597 F. 2d 163 (9th Cir. 1979).

[112]524 F. 2d 876 (1975).

[113]538 F. 2d 243 (9th Cir. 1976).

[114]552 F. 2d 872 (9th Cir. 1977).

[115]Ibid., p. 874.

[116]538 F. 2d 243 (9th Cir. 1976). p. 247.

[117]552 F. 2d 872 (9th Cir. 1977). p. 873.

[118]538 F. 2d 243 (9th Cir. 1976). p. 248.

[119]552 R. 2d 872 (9th Cir. 1977). p. 874.

[120]591 F. 2d 493 (9th Cir. 1978).

[121]579 F. 2d 526 (9th Cir. 1978).

[122]535 F. 2d 605 (10th Cir. 1976).

[123]Ibid., p. 616.

TABLE 4--Continued

Case Name (listed alphabetically)	Due Process Components 1	2	3	4	5	6	7	8	9	10
Soni v. Board of Trustees of University of Tennessee (1975)	X				X					
Wells v. Board of Regents of the Murray State University (1976)	NOT CLEARLY SET FORTH									
7th Circuit										
Hostrop v. Board of Junior College District No. 515 (1975)	X	X			X					
Johnson v. Board of Regents of University of Wisconsin System (1975)	X	X	X		X					
Stebbins v. Weaver (1976)	NOT CLEARLY SET FORTH									
8th Circuit										
Brouillette v. Board of Directors of Merged Area IX, Alias Eastern Iowa Community College (1975)	X	X	X	X	X					
Bruce v. Board of Regents for the Northwest Missouri State University (1976)	X				X					
Esteban v. Central Missouri State College (1969)	X	X	X	X	X	X	X	X	X	

TABLE 4--Continued

Case Name (listed alphabetically)	Due Process Components 1	2	3	4	5	6	7	8	9	10
General Order on Judicial Standards, Procedure and Substance in of Student Discipline in Tax-Supported Institutions of . . . (1968)	X		X		X			X		
Greenhill v. Bailey (1975)	X				X					
9th Circuit										
Bignall v. North Idaho College (1976)	X	X	X	X	X	X	X	X	X	X
Davis v. Oregon State University (1978)	NOT CLEARLY SET FORTH									
Decker v. North Idaho College (1977)	X	X	X	X	X	X	X	X	X	X
Haimowitz v. University of Neveda (1978)					X					
Peacock v. Board of Regents of the Universities and State Colleges of Arizona (1979)	NOT CLEARLY SET FORTH									
Seitz v. Clark (1975)	X									
10th Circuit										
Prebble v. Brodrick (1976)	X				X	X	X	X		